



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

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February 22, 2001

Federal Communications Commission  
Office of the Secretary

Ms. Dorothy T. Attwood  
Chief, Common Carrier Bureau  
Federal Communications Commission  
Washington, DC 20554

Re: FCC Docket No. 99-301, Local Competition and Broadband Reporting – Notice of Pending FCC Action to Eliminate or Reduce Existing Size Standard for Broadband Reporting

Dear Ms. Attwood:

This letter responds to your letter of November 15, 2000, regarding Federal Communications Commission's (FCC) Docket No. 99-301, Local Competition and Broadband Reporting. Your letter is requesting the Small Business Administration's (SBA) concurrence with the FCC's position that the reporting thresholds for Local Competition and Broadband Reporting do not constitute small business size standards. As we explain below, SBA does not concur with the FCC's assertion that the thresholds for reporting do not constitute small business size standards. SBA believes that these thresholds are in fact special small business size standards for determining who must report and what they must report.

This letter also responds to your January 12, 2001, letter. In this later letter, you advise the SBA of an FCC *Notice of Proposed Rulemaking* (NPRM) action that would modify or eliminate the 250 broadband line threshold that the FCC had adopted for reporting purposes. On January 23, 2001, I responded that I would advise you as soon as possible of SBA's position on whether the standards in the NPRM are considered special size standards that would require the SBA Administrator's approval prior to their being prescribed for your program. Subsequent to our letter of January 23, however, we became aware that the Commission had adopted the NPRM on January 17, 2001, and released it on January 19, 2001.

Pursuant to the Small Business Act (Act) and SBA's implementing regulations, the SBA Administrator alone has authority to approve an agency's special size standards for use in its programs. The Act specifically states that unless authorized by statute, "no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard...is approved by the Administrator." 15 U.S.C. § 632(a)(2)(C)(iii); see also 13 CFR § 121.902(b)(1)(iii)

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(copy attached). SBA's Office of Size Standards is responsible for determining if an Agency's distinction between different enterprises based on a measure of their size is a size standard and subject to SBA review under the Act and its Small Business Size Regulations contained in 13 CFR § 121.

With regard to your November 15, 2000, letter, we have determined that the reporting thresholds for both the Local Competition and Broadband Reporting requirements are small business size standards. Therefore, they would require the SBA Administrator's approval. The thresholds that the FCC established provide for different reporting requirements for different classes of entities based on their size, measured by the number of broadband lines they have in place. Accordingly, we do not agree with the FCC's contention that they do not constitute special size standards and do not require the SBA Administrator's approval.

In addition, we cannot consider your January 12, 2001, letter as a formal request for SBA approval of your standard in accordance with 13 CFR § 121.902(b), because neither it nor the NPRM complies with the requirements of the Act or our Small Business Size Regulations. The Act and our Regulations require opportunity for public comment on an Agency's proposed size standards, which must be specific. *Id* § 632(a)(2)(C)(i); 13 CFR § 121.902(b). The January 19, 2001, NPRM does not propose a specific size standard. Rather, using as a basis the already adopted 250 broadband line threshold, the FCC seeks comment on whether it should eliminate, lower, raise or retain the 250 broadband line threshold. Therefore, the NPRM does not satisfy the requirements of the Act and Regulations for a "proposed size standard" offered for public comment.

Further, to consider your January 12, 2001, letter as a request for the SBA Administrator's approval, we would need the information required by 13 CFR § 121.902 that states in part

- (2) In order to receive the approval of SBA's Administrator, the agency head must:
  - (i) Request approval prior to publishing the proposed rule containing the size standard. The request must include: an explanation of the contemplated industry size standard, the reasons the SBA size standard is not appropriate, and the reasons the proposed size standard would be appropriate; and a certification that there will be compliance with the criteria set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and
  - (ii) Agree to provide written notice to SBA's Administrator prior to publishing the contemplated size standard as a final


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rule. . . .

We are pleased to assist you in this process and are happy to work with you and the Commission to assist small businesses. However, we can only do so in accordance with the Act and our Small Business Size Regulations. In the meantime, please include this letter in the docket of the captioned proceeding. If you have any questions on this matter or need additional information concerning size standards, please contact me or Carl Jordan at (202) 205-6618.

Sincerely,

  
for : Gary M. Jackson  
Assistant Administrator  
for Size Standards

Enclosure

cc: Chief Counsel for Advocacy